

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID LAFONZO BROOMFIELD,

Defendant-Appellant.

UNPUBLISHED
February 11, 2000

No. 209253
Calhoun Circuit Court
LC No. 97-000299-FH

Before: Fitzgerald, P.J., and Saad and Whitbeck, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of carrying a concealed weapon in a vehicle, MCL 750.227(1); MSA 28.424(1), fleeing and eluding, MCL 750.479a; MSA 28.747(1), and operating a motor vehicle with a suspended license, MCL 257.904; MSA 9.2604. He was sentenced as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, to a prison term of five to ten years for the concealed weapon conviction and to a concurrent term of one year for each of the remaining convictions. Defendant appeals as of right. We affirm.

Two officers of the Battle Creek Police Department were on patrol in a marked police vehicle when they spotted defendant driving a Lincoln Towncar along a city street. One of the officers recognized defendant from previous contacts and believed that defendant was operating the vehicle with a suspended license. The police dispatcher confirmed that defendant's license was in fact suspended, and further informed the officers that defendant had several outstanding warrants.

At that point, the officers activated the overhead light bar on the patrol vehicle and, when defendant disregarded a red traffic light, activated the siren as well. Defendant failed to stop the vehicle, choosing instead to attempt to elude the officers while traveling at a rate of speed well in excess of the posted limit. As they pursued the car, the officers observed that there were two additional individuals riding in the car, one seated in the front passenger seat and one seated in the rear seat behind the front passenger.

At one point during the pursuit, each of the officers saw defendant lean toward the passenger side window and at that same time witnessed a black object, which was later confirmed to be a handgun, being thrown from the front passenger window. After the weapon had been thrown from the vehicle, defendant continued to flee from the officers, making several turns and disregarding a second red traffic light, until he stopped the car and was arrested.

Defendant argues that the evidence presented was insufficient to sustain the conviction of carrying a concealed weapon in a vehicle. When reviewing a challenge to the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecution and determines whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Godbold*, 230 Mich App 508, 522; 585 NW2d 13 (1998). Circumstantial evidence and the reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994).

To support a conviction for carrying a weapon in a vehicle, the prosecution must show: (1) the presence of a weapon in a vehicle operated or occupied by the defendant, (2) that the defendant knew or was aware of its presence, and (3) that he was "carrying" it. *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999). Here, defendant claims that the evidence failed to establish that he was "carrying" the weapon, or that he had even knowledge of its presence in the car. We disagree.

In *People v Butler*, 413 Mich 377; 319 NW2d 540 (1982), the Court noted several factors that other jurisdictions have considered in determining whether there was sufficient circumstantial evidence to substantiate the "carrying" element in cases involving weapon possession within a motor vehicle. Among the five factors cited by the Court were the defendant's ownership or operation of the vehicle, and the length of time during which the defendant drove or occupied the vehicle. *Id.* at 390, n 11. Here, the evidence offered at trial indicated that defendant had possession of the vehicle for approximately four hours before he was spotted driving the car by police. While the Court in *Butler* noted that its recitation of these factors was not to be considered as an expression of its opinion regarding their relevancy or importance, we believe that the fact that defendant had control of the vehicle is at least marginally relevant to a consideration of whether sufficient evidence to support his conviction exists. *Id.*; see also *Nimeth, supra*.

Defendant's control of the vehicle, however, was not the only evidence from which a rational trier of fact could have found the essential elements of the offense had been proven beyond a reasonable doubt. Each of the officers seated in the patrol car that followed defendant testified that they witnessed defendant, from a distance of only two to three car lengths, lean his upper torso into the front passenger side of the Lincoln just as a weapon flew out of the car from the passenger window. According to the officers, neither of the other two occupants in the car made any simultaneous movements that would be consistent with throwing the weapon. Moreover, the suspicious nature of defendant's movements at the instant the weapon was ejected from the vehicle, in conjunction with his reckless attempt to flee from the officers, provides a sufficiently reasonable basis upon which the jury could infer both that defendant had knowledge of the weapon's presence in the car, and that it was he who "carried" the item. Viewing the

evidence in a light most favorable to the prosecution, we believe that there was sufficient circumstantial evidence to support the jury's verdict.¹

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Henry William Saad

/s/ William C. Whitbeck

¹ Contrary to defendant's suggestions, even in cases relying on circumstantial evidence, the prosecution need not negate every reasonable theory consistent with the defendant's innocence. *Nimeth, supra* at 623.